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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,492	03/26/2004	Ted Guidotti	1018798-000222	7892
21839 7590 03/08/2010 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
03/08/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com  
offserv@bipc.com

**Office Action Summary****Application No.**

10/809,492

**Applicant(s)**

GUIDOTTI ET AL.

**Examiner**

MELANIE J. HAND

**Art Unit**

3761

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5, 6, 9-18, 22, 23 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 9, 11, 13, 14, 16-18, 22 and 26-29 is/are rejected.
- 7) ☒ Claim(s) 10, 12, 15 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-944)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/29/09
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see Remarks, filed November 4, 2009, with respect to the rejection(s) of claim(s) 1, 2, 6, 11 and 18 under 35 U.S.C. 35 U.S.C. 112 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.
2. Applicant's arguments, see Remarks, filed November 4, 2009, with respect to the rejection(s) of claims 1-3, 5, 6, 9, 10, 12-18, 22, 23 and 26-29 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

### ***Information Disclosure Statement***

3. The information disclosure statement (IDS) submitted on August 28, 2009 was filed after the mailing date of the non-final action on August 20, 2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5, 6, 16-18 and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Guidotti et al (U.S. Patent No. 6,037,518).

With respect to **claim 1**: Guidotti discloses an absorbent article comprising a liquid permeable upper surface defined by the wearer-facing surface of liquid-permeable cover layer 1, a liquid impermeable lower surface defined by the garment-facing surface of liquid-impermeable cover layer 2, and an absorbent structure 3 arranged between the liquid permeable upper surface and the liquid impermeable lower surface, which article in the longitudinal direction has a crotch portion 6 and two end portions 4,5, wherein the absorbent structure 3 comprises an acquisition layer 14 and at least one first storage layer 12, wherein said first storage layer comprises at least 50 percent by weight of a super absorbent material calculated on the total weight of the first storage layer, wherein the first storage layer in a dry condition has a density of 0.1 – 1 g/cc, which overlaps the claimed range of a density exceeding 0.4 g/cm<sup>3</sup>, and said first storage layer 12 in the crotch portion of the absorbent structure has longitudinally extending apertures extending through an entire thickness of the first storage layer (Fig. 9), wherein the first storage layer has a first surface facing the liquid permeable upper surface of the article, and a second surface facing away from the liquid permeable surface of the article, wherein the first storage

layer 12 lies between the acquisition layer 14 and the liquid permeable upper surface, which lies above layer 11 in Fig. 9. (Col. 4, lines 47-50, Col. 5, lines 12-20)

With respect to **claim 2**: The first storage layer 12 has a density exceeding 0.5 g/cm<sup>3</sup>. (Col. 4, lines 47-50)

With respect to **claim 3**: The first storage layer comprises 2-80% superabsorbent, which overlaps the claimed range of at least 70 percent by weight of a super absorbent material calculated on the total weight of the first storage layer. (Col. 5, lines 12-20)

With respect to **claim 5**: The apertures comprise longitudinal channels 13. (Fig. 9, Col. 3, lines 37-42, Col. 5, lines 55-61)

With respect to **claim 6**: The material between the apertures 13, in the crotch portion 6 of the first storage layer 12, exhibits a width equal to the distance of the thinner portions 11b in Fig. 3, i.e. 5-50 mm, which overlaps the range "being maximally 20 mm." (Col. 3, lines 63-67)

With respect to **claim 16**: Guidotti discloses an absorbent article comprising a liquid permeable upper surface defined by the wearer-facing surface of liquid-permeable cover layer 1, a liquid impermeable lower surface defined by the garment-facing surface of liquid-impermeable cover layer 2, and an absorbent structure 3 arranged between the liquid permeable upper surface and the liquid impermeable lower surface, which article in the longitudinal direction has a crotch portion 6 and two end portions 4,5, wherein the absorbent structure 3 comprises an acquisition layer 14 and at least one first storage layer 12, wherein said first storage layer comprises a

super absorbent material. The first storage layer 12 necessarily has a greater ability to retain liquid than the acquisition layer 14 inasmuch as the first storage layer contains said superabsorbent whereas layer 14 is free of superabsorbent, and is located between the acquisition layer 14 and liquid permeable upper surface and said first storage layer 12 in the crotch portion 6 of the absorbent structure has longitudinally extending apertures extending through an entire thickness of the first storage layer (Fig. 9), wherein the first storage layer has a first surface facing the liquid permeable upper surface of the article, and a second surface facing away from the liquid permeable surface of the article, wherein the first storage layer 12 lies between the acquisition layer 14 and the liquid permeable upper surface, which lies above layer 11 in Fig. 9. (Col. 4, lines 47-50, Col. 5, lines 12-20, 34, 35, 55-61)

With respect to **claim 17**: The first storage layer comprises 2-80% superabsorbent, which overlaps the claimed range of at least 50 percent by weight of a super absorbent material calculated on the total weight of the first storage layer. (Col. 5, lines 12-20)

With respect to **claim 18**: The first storage layer 12 has a density exceeding 0.4 g/cm3. (Col. 4, lines 47-50)

With respect to **claims 26,28**: The apertures or recesses 13 are in the form of longitudinal channels that meet all of the structural limitations of claim 26 as to the recited channels and thus are necessarily adapted to direct liquid in a direction towards the end portions of the absorbent structure. (Fig. 9, Col. 3, lines 37-42, Col. 5, lines 55-61)

With respect to **claims 27,29**: The apertures or recesses 13 contain absorbent material and are therefore necessarily spaces capable of holding liquid before the liquid is absorbed by the first storage layer 12.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
8. Claims 14 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guidotti et al ('518).

With respect to **claims 14,22**: Guidotti discloses a second storage layer 11 wherein the absorbent structure containing a lower amount of super absorbent material (0-30%) calculated on the total weight of the storage layer than the first storage layer 12. However the second storage layer 11 is not arranged between the acquisition layer and the liquid impermeable lower surface. However by adding a second layer 14, being free of superabsorbent and thus having a lower amount than the first storage layer 12, would provide additional absorbent capacity. Thus it would be obvious to one of ordinary skill in the art to modify the article of Guidotti to add a

second layer 14 identical to the first layer 14 below the disclosed layer 14 between the first layer 14 (acquisition layer) and the impermeable lower surface with a reasonable expectation of success.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guidotti et al ('518) in view of McBride (U.S. Patent Application Publication No. 2004/0019340).

With respect to **claim 13**: Guidotti does not disclose that the acquisition layer is corona treated. McBride teaches an absorbent article having a topsheet and acquisition layer in which either or both are treated via corona treatment ('340, ¶10037) to improve affinity to water and water handling. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Guidotti by corona treating the acquisition layer as disclosed by McBride to improve its affinity for water and fluid handling as taught by McBride.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guidotti ('518) in view of Olsen et al (U.S. Patent No. 5,849,003).

With respect to **claim 9**: The absorbent article disclosed by Guidotti comprises a liquid permeable top sheet 1. Guidotti does not disclose that the liquid permeable top sheet and the acquisition layer 14 are thermally joined in a hollow space in the first storage layer created by said apertures 13. Olsen teaches an absorbent article in which a topsheet is bonded to an underlying acquisition layer (capillary channel bun 44) that functions as a storage layer, which is in turn bonded to an absorbent core that functions as an acquisition layer. Olsen teaches that the topsheet is bonded at the point of apertures to the capillary fibers of the capillary bun 44.



This bonding occurs via hot melt adhesives, thus the topsheet and first storage layer 44 of Olsen are thermally joined to activate the hot melt adhesives in a hollow space in the first storage layer 44 created by said capillaries. ('003, Col. 23, lines 3-33) Olsen teaches that this allows fluid to flow more efficiently through the topsheet and first storage layer 44 to the core. Thus it would be obvious to one of ordinary skill in the art to modify the article of Guidotti by thermally joining the topsheet and acquisition layer in a hollow space in the first storage layer 36 created by apertures as taught by Olsen to more efficiently guide fluid into the channels defined by said apertures to the absorbent core.

***Allowable Subject Matter***

11. Claim 11 is allowed.
12. Claims 10, 12, 15 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Reasons for Indicating Allowable Subject Matter***

13. The following is a statement of reasons for the indication of allowable subject matter:
  - a. with respect to claim 10, Guidotti discloses that the acquisition layer 14 is free of superabsorbent or contains very little and therefore teaches away from an acquisition layer that is a polyacrylate based super absorbent foam material, as such an acquisition layer would be 100% superabsorbent;
  - b. with respect to claim 12, Guidotti does not disclose or suggest an acquisition layer that is a fibrous layer including polyacrylate-based particles or a polyacrylate-based coating bonded to the fibrous layer wherein the polyacrylate-based particles or the

polyacrylate-based coating is bonded to the fibrous layer by spraying acrylic acid monomers onto the fibrous layer whereby the acrylic acid monomer is allowed to polymerise because polyacrylate-based polymer particles are superabsorbent materials and, for reasons stated *supra* in item 10a of this action, Guidotti does not disclose or suggest an acquisition layer that is a fibrous layer containing including polyacrylate-based particles or a polyacrylate-based coating bonded to the fibrous layer according to claim 12;

c. With respect to claims 15 and 23, Guidotti fairly suggests a second storage layer the second storage layer being arranged between the acquisition layer and the liquid impermeable lower surface, but does not disclose or suggest any storage layer that partly or entirely encloses another storage layer, specifically the first storage layer. Thus it would not be obvious to one of ordinary skill in the art to first modify the Guidotti article so as to comprise a second storage layer and then further modify the resulting article such that the second storage layer partly or entirely encloses the first storage layer.

#### ***Reasons for Allowance***

14. The following is an examiner's statement of reasons for allowance: Applicant amended claim 11 to be independent form, overcoming the objection to that claim in the previous action. Therefore the claim is allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/  
Primary Examiner, Art Unit 3761